IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

HEARST PUBLICATIONS, INCORPORATED, a corporation, *Appellant,* vs. UNITED STATES OF AMERICA, *Appellee.*	No. 11,781 No. 11,782
THE CHRONICLE PUBLISHING COMPANY, a corporation, *Appellant,* vs. UNITED STATES OF AMERICA, *Appellee.*	No. 11,783 No. 11,784

Appeal from the District Court of the United States for the Northern District of California, Southern Division.

APPELLANTS' OPENING BRIEF.

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PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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APPELLANTS' OPENING BRIEF.

STATEMENT AS TO JURISDICTION.

In these four actions, consolidated below for the purpose of trial and on appeal for the purpose of the briefs and oral arguments, plaintiffs seek refund of Federal Insurance Contributions and Unemployment taxes collected from them for the taxable periods within the years 1937 through 1940. On April 29, 1947, the United States District Court for the North-

ern District of California entered a judgment in each case, dismissing the action on the merits. Jurisdiction in the District Court is conferred by the Judicial Code, 28 U.S.C.A., Sec. 41 (20). Jurisdiction on appeal is conferred by the Judicial Code, 28 U.S.C.A., Sections 225 and 226.

STATEMENT OF THE CASE.

The Issue.

The taxes sought to be recovered were arbitrarily assessed against appellant publishers on the estimated income derived by street vendors from the sale of newspapers to the public within the period 1937-1940. The assessment of the taxes was based on the claim that the vendors were the employees of the publishers. This claim is denied by the publishers who contend that the vendors were independent contractors. Thus the issue is presented. No other issue is involved. The pertinent provisions of the applicable statutes are set forth in the Appendix (Appendix I).

The Facts.

How daily newspapers reach the public is a matter of common knowledge. Some are delivered at homes and offices to regular subscribers by carriers—usually boys under eighteen years of age. Some are sold in stores, hotels, and building lobbies. Some are sold from racks, the purchaser helping himself. Some are sold on the street corners and other public places by men over eighteen years of age known as vendors. It

is the relationship of these vendors to the publishers that is in question.

Early in 1937, the vendors in San Francisco organized as the Newspaper and Periodical Vendors' and Distributors' Union No. 468, hereinafter called the "Union." On August 31, 1937, the Union and the publishers, the latter through the San Francisco Newspaper Publishers' Association, entered into a formal contract, covering the sale of newspapers on the streets of San Francisco. This contract was followed by another in 1939, and a third in 1940. All are admittedly similar in such of their terms as are here material and hence will be referred to collectively as the "contract." A copy of the 1940 contract is set forth in the Appendix (Appendix III).

Operations under the contract were as follows:

There were various types of so-called corners. There was the Full-Time Corner where the vendor operated for the full selling period as agreed in the contract; the Part-Time Corner where the vendor operated for an agreed part of the selling period; the Special Events Corner, meaning a selling location at some event, such as a prize fight; and the Special Wrapped Edition Corner where special editions were sold wrapped ready for mailing by the purchaser. In addition, there was provision for Roving News Vendors, that is to say, vendors who sold newspapers anywhere.

Dealings as to any corner were between the publisher and the individual vendor, the arrangement between them being in conformity with the contract. Whenever an existing corner became vacant, or a new

corner was added, the Union would supply the publisher with a list of available vendors from which the publisher would select the one it desired and offer him the corner. Upon the vendor's acceptance, the deal was made. A vendor's contract for a corner could not be terminated by the publisher, except for default.

As newspapers came off the press, employees of the publishers known as "wholesalers" delivered to each vendor, at his corner, the number the latter specified. This procedure was repeated as each successive edition came off the press. The wholesale price to the vendor and the retail price to the public were negotiated prices fixed by the contract, uniform throughout the city, and not subject to change by either party during the life of the contract. The wholesalers collected daily from the vendors for all papers delivered to them and not returned. The difference between the wholesale price paid by the vendor and the retail price which he received, belonged to the vendor.

The vendors were not required to go, and did not go, to any sales meetings. They were not required to receive or follow, nor did they receive or follow, any instructions or orders from the publishers. They were not required to make, nor did they make, any reports or returns of any kind. They were free to hire, and sometimes did hire, substitutes at their own cost. They extended credit to some customers at their own risk.

The only contact between the vendors and the publishers was through the wholesalers, who had no authority under the contract and were specifically in-

structed by the publishers not to attempt to control or discipline the vendors in any way. The wholesalers did report to the publishers any defaults or misfeasances they observed, and the publishers had the right to terminate any contract for cause or ask the Union to take disciplinary action. If a contract was so terminated and the vendor felt that the publisher had acted without justifiable cause, he had recourse, through the Union, to arbitration.

Many corners were "consolidated corners," meaning corners where one vendor sold two newspapers—for example: the San Francisco Examiner and the San Francisco Chronicle, the morning papers; or the San Francisco News and the San Francisco Call-Bulletin, the evening papers.

The publishers sometimes wanted retail outlets at corners which would not yield an attractive profit to the vendor thereon. To induce vendors to take such corners, the contract provided for a guarantee, on the part of the publishers, that a vendor's weekly profits from the sale of papers would equal or exceed a given figure. While, under the contract, the guarantee applied to all corners, there were relatively few where the vendor's profits were not in excess of the guaranteed amount. As to the Heart publications, the profits of approximately 87% of the vendors of the Examiner, and of 75% of the vendors of the Call-Bulletin, equalled or exceeded the guarantee. The only evidence as to the San Francisco Chronicle shows that during five weeks in 1943, the profits of 70% of the vendors equalled or exceeded the guarantee, and that

at the time of trial, the profits of 92% equalled or exceeded the guarantee.

A vendor could handle a competing paper with the consent of the publisher, and consent was common, as witness the consolidated corners. The vendors were free under the contract to handle non-competitive publications and any other articles, and many vendors, about one-sixth of the total, did sell magazines, out-of-town papers, cigarettes, razor blades, chewing gum, candy, etc.

The contract by express terms declares the intent of the parties to maintain a seller-buyer relationship and not an employer-employee relationship. The Union, as amicus curiae, seeks to preserve that relationship.

Appellants believe the question as to the status of street news vendors under the Social Security Act is presented to a Federal Court for the first time in this case.

SPECIFICATION OF ERRORS.

Appellants say that the District Court erred:

1. In finding that the vendors were controlled by the publishers in a manner inconsistent with an independent contractor relationship, and in failing to find that there was an absence of such control.

2. In failing to find that factors other than absence of control existed which indicated the independent contractor relationship.

3. In finding that the retail sale of newspapers was an integral part of the publisher's business, and in failing to find that the retail sale of newspapers by persons independent of the publisher was common practice and not unrealistic.

4. After having erroneously found that the street sale of papers by vendors was an integral part of the business of the publisher, in compounding the error by concluding that this finding was of major importance in determining the status of the vendors.

5. In holding that the vendors in this case were employees subject to the Social Security Act.

SUMMARY OF ARGUMENT.

I.

The opinion and decisions of the Supreme Court in the *Silk* and *Greyvan* cases reflect the controlling principles applicable to this case.

II.

The retail sales operations of the vendors were not an integral part of the publisher's business, but could they be so considered from some point of view, this would not render the buyer-seller relationship unrealistic.

III.

A fair application of all the relevant tests shows that the vendors were independent contractors.

(a) The control test.

(b) Other pertinent factors.

IV.

Congress never intended a construction of the Social Security Act which would permit the vendors to be classed as employees.

I.

THE OPINION AND DECISIONS OF THE SUPREME COURT IN THE SILK AND GREYVAN CASES REFLECT THE CONTROLLING PRINCIPLES APPLICABLE TO THIS CASE.

Since the opinion was rendered in the court below, the United States Supreme Court, in two important decisions, has dealt with the question of when one is an employee or an independent contractor within the meaning of the Social Security laws. These decisions are *United States v. Silk* and *Harrisson v. Greyvan Lines,* (June 16, 1947), 91 L. Ed. (Ad. Op.) 1335. Both were actions to obtain refund of employment taxes.

In the *Silk* case, the plaintiff was a retail coal dealer. The status of the men who unloaded cars of coal which the dealer purchased, and of the truckers who delivered coal which he sold, was involved. The coal unloaders came to the dealer's yard when and as they pleased, bringing their own shovels, and unloaded cars at so much per car. They were held by the Supreme Court to be employees. The coal truckers

owned their own trucks. They assembled at the yard and placed their names on a call list. When an order was received, the dealer rang a bell and the trucker at the head of the list delivered the coal for a stipulated sum and collected the price of coal sent collect. The truckers were under no obligation to accept a call to deliver coal. They could hire any assistants they wished, and paid all of their own expenses. They also hauled for others. The dealer paid any damage they caused in making deliveries. They were held by the Supreme Court to be independent contractors.

In the *Greyvan* case, the plaintiff company was a common carrier with headquarters in Chicago and agencies in various states to solicit business. Its system of doing business was adopted prior to the passage of the Social Security laws. Under this system, it entered into a contract with truckers, terminable by either party at any time, under which each trucker agreed to furnish his own truck; to pay all trucking expenses, including any labor he saw fit to hire; to pay for all insurance which the company might specify; to pay for all damages in shipment; to paint "Greyvan Lines" on his truck; to collect and account for all moneys due from customers; to post a bond with the company; to be present on the truck and to drive it except when a competent relief driver was at the wheel; and to abide by the company's rules and regulations. All contracts with the customer were between the company and the customer. The company instructed each trucker when and where to load freight. As compensation, the truckers received a percentage

of the tariff, between fifty and fifty-two percent, plus a small percentage bonus for satisfactory performance. The company secured all franchises and permits, and the company also carried cargo insurance. A manual issued by the company contained detailed instructions relative to operations but there was evidence that these instructions were not enforced and that the truckers were not controlled as to the manner of doing the trucking. There was a contract between the company and the truckers' union which required all truckers to be members of the union and that all grievances be settled by the company and the union. The insurance required of the truckers was actually under a group policy, each trucker paying his share of the cost. The company had some truckers which admittedly were employees, but the truckers whose operations are described above were held by the Supreme Court to be independent contractors.

In its opinion, the Supreme Court states:

> "Application of the social security legislation should follow the same rule that we applied to the National Labor Relations Act in the Hearst Case. This, of course, does not leave courts free to determine the employer-employee relationship without regard to the provisions of the Act. The taxpayer must be an 'employer' and the man who receives wages an 'employee.' There is no indication that Congress intended to change normal business relationships through which one business organization obtained the services of another to perform a portion of production or distribution. Few businesses are so completely integrated that they can themselves produce the raw material,

manufacture and distribute the finished product to the ultimate consumer without assistance from independent contractors. The Social Security Act was drawn with this industrial situation as a part of the surroundings in which it was to be enforced. Where a part of an industrial process is in the hands of independent contractors, they are the ones who should pay the social security taxes.

"The long-standing regulations of the Treasury and the Federal Security Agency (H Doc 595, 79th Cong 2d Sess) recognize that independent contractors exist under the Act. The pertinent portions are set out in the margin. Certainly the industry's right to control how 'work shall be done' is a factor in the determination of whether the worker is an employee or independent contractor. The Government points out that the regulations were construed by the Commissioner of Internal Revenue to cover the circumstances here presented. This is shown by his additional tax assessments. Other instances of such administrative determinations are called to our attention.

" * * *

"Probably it is quite impossible to extract from the statute a rule of thumb to define the limits of the employer-employee relationship. *The Social Security Agency and the courts will find that degrees of control, opportunities for profit or loss, investment in facilities, permanency of relation and skill required in the claimed independent operation are important for decision. No one is controlling nor is the list complete.*" (Emphasis added.)

From the foregoing, it is clear that while the Social Security Act is to be liberally construed in the light

of its objectives, there is no intention to change normal business relationships; and it is relatively unimportant, in determining the status of an individual, that, in a broad sense, his functions are an integral part of the business. The Supreme Court held that truckers, who were certainly an integral part of the trucking business, and retail coal delivery men, who were certainly an integral part of the retail coal business, were both independent contractors.

It also is clear that in determining the status of the persons there involved, the Supreme Court considered the ordinary factors distinguishing independent contractors from employees, namely, degrees of control, opportunities for profit or loss, investment in facilities, permanency of the relation, and the skill required in the claimed independent operation. Also, it pointed out that no one of these factors was controlling, nor was the list complete. Furthermore, by its decision, the Supreme Court gave effect to the arrangement between the parties. In a sense, the arrangement was a controlling factor. Normally, the trucking of a trucking company and the deliveries of a retail coal dealer are the work of employees. Nevertheless, the truckers and the delivery men were held to be independent contractors because such was the intent of the parties, and the arrangement, in each case, was consistent with that intent.

It has been said, and no doubt will be urged in this case, that the opinion in the *Silk* and *Greyvan* cases repudiates common law concepts and proclaims the objectives of the Social Security Act as controlling.

Appellants submit that it does not. The statement that technical concepts are to be avoided and the Social Security Act liberally construed in the light of its objectives is followed by the admonition that Congress shows no intention to change "normal business relationships"; then, by a reference to the regulation which emphasizes the factor of control over the manner of doing the work; and finally, by a statement setting forth the factors which have been enumerated above, which factors are some of the ordinary ones that have long been considered by the courts at common law. Thus, upon reading the entire opinion and giving effect to the decisions of the Supreme Court, it is evident the substance of what the court has said is that the ordinary factors applied at common law still are the important ones, but that in applying these factors technical concepts should not be controlling.

As appellants will later develop in this brief, the principles announced in these cases are consistent with earlier rulings of this and other Circuit Courts of Appeals.

II.

THE RETAIL SALES OPERATIONS OF THE VENDORS WERE NOT AN INTEGRAL PART OF THE PUBLISHER'S BUSINESS, BUT COULD THEY BE SO CONSIDERED FROM SOME POINT OF VIEW, THIS WOULD NOT RENDER THE BUYER-SELLER RELATIONSHIP UNREALISTIC.

Included in the opinion of the District Court are these statements: "But the relationship of buyer and seller between them [the publishers and the vendors]

is entirely unrealistic. The Publishers are not engaged in the wholesale business of selling newspapers to retailers and the news vendors are not in any sense retail merchants in the business of buying and selling merchandise. (R. 39) . . . Here the news vendors were engaged, as a means of livelihood, in regularly performing personal services constituting an integral part of the business operations of the publisher." (R. 46). Appellants challenge these statements, and, because they denote thoughts which appear to have weighed heavily in the mind of the District Court and to have contributed largely to its decision, desire to point out the fallacies therein.

Publishers are primarily concerned with the assembling, editing, and publishing of news. They stand in much the same position as any manufacturer. They are naturally interested in the retail sale of newspapers, just as the manufacturer of cigarettes is interested in the retail sale of his product. It does not follow, however, that the publishers desire to be, or generally are, in the retail business, any more than the cigarette or other manufacturer. Although it is true that the publishers, just as some other manufacturers, make some sales direct to the consumer, as, for example, by means of unattended racks equipped with coin boxes, it is also true that they make other sales at wholesale to drugstores, cigar stores, hotels, etc. It therefore follows that it would be entirely normal and realistic either for the publishers to furnish newspapers to the vendors for sale by the latter as the publishers' employees, or to sell the newspapers to

the vendors at wholesale for sale at retail by the latter as independent contractors. Either scheme of operations would be normal and realistic. The intent of the parties and the circumstances determine which scheme is in effect.

In its reasoning the court further says (R. 39): "A newspaper is not, in fact, a commodity bought and sold as merchandise at all. It is the medium of disseminating information; it is the information which is sold and the publishers are the distributors and circulators of this information through the agency of their news vendors." This is a concept that involves a theoretical and radical departure from practical thought if it is intended to support the theory that one cannot engage in the business of selling publications at retail.

Admittedly, the public does not want a newspaper for the paper itself, but for the news which is printed thereon. The same is true of a book. The contents are the thing, not the pages or cover. Phonograph records, also, are in demand only because a musical or other composition has been impressed thereon. It is extremely doubtful, however, if anyone would seriously contend that a book or phonograph record is merely a medium of disseminating information, fiction, or musical entertainment in the sense that it cannot be dealt in by retailers who are independent of the wholesalers or manufacturers thereof. Accordingly, there is nothing "unrealistic" in the retail sale of a newspaper by a vendor as an independent contractor. There is no perceptible difference in principle between

such a transaction and the activities of the independent retail dealer in books, phonograph records, or Ford automobiles.

The District Court also has sought to fortify its statements above quoted and discussed by pointing to the fact that the vendors had the right to return and receive credit for unsold papers. When it is borne in mind that a newspaper is of an extremely perishable nature—nothing could be more obsolete than a newspaper a few hours old—it is clear that the right to return unsold copies is consistent with general practice in respect to perishable commodities. It is customary for grocers to return unsold bread and other articles which have a very limited salable life. If this was not permitted, merchants dealing in perishable merchandise could not afford to carry an adequate stock. The right of return is, therefore, no more indicative of an unrealistic relationship in the case of a vendor of newspapers than in the case of a grocer.

In short, the District Court has indicated no sound basis for its conclusion that a sale to vendors at wholesale, and a resale by them at retail, is in its nature fictitious, or unrealistic, or not in accordance with normal practice.

Having erroneously concluded that the publishers were not in the business of selling at wholesale, and that the vendors were engaged in an integral part of the publisher's business, the District Court then attached undue significance to its conclusion. Appellants contend that this so-called "integral theory" was largely dissipated by the Supreme Court in the *Silk*

and *Greyvan* cases. Those cases establish that Congress never "intended to change normal business relationships through which one business organization obtained the services of another to perform a portion of production or distribution." The Supreme Court, in those cases, held that the retail coal dealer delivered his coal through an independent contractor and the trucking company carried on its trucking through independent contractors. It is unnecessary to go that far in the instant case. Retailing may or may not be carried on by a publisher and, in any event, is only one separable phase of his business, while the delivery of coal by a retail coal dealer and the carrying on of trucking by a trucking company constitute substantially their entire business. Clearly, the District Court in the instant case was led into error by attaching too much importance to the fact that the vendors were engaged in handling newspapers and, hence, were in the same business generally as those who published the newspapers. It should have been guided by the principle announced in the *Silk* and *Greyvan* cases and realized that this fact did not determine, nor greatly aid in determining, the status of the vendors.

III.

A FAIR APPLICATION OF ALL THE RELEVANT TESTS SHOWS THAT THE VENDORS WERE INDEPENDENT CONTRACTORS.

(a) The Control Test.

Whatever formula is used for determining the status of vendors, the extent and nature of the publishers' control is the most important consideration.

In Treas. Dept. Reg. 107, Sec. 403.204 (Appendix II), it is said with relation to who are employees:

> "Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so."

With reference to the subject of control, the District Court in its opinion makes this statement (R. 41): "Here there actually was at least a reasonable measure of general control exercised by the publisher over the manner in which the services of the vendors were performed." Appellants dispute this statement, and assert that it expresses an unfounded inference drawn by the District Court from certain unsupported and overly emphasized facts while dismissing other highly significant facts as mere "details" (R. 46). The facts asserted by the District Court which seem to have prompted its above-quoted statement are that the publishers selected the vendors; that the publishers designated the place, days, and hours, of service; that the profits of the vendors were fixed by the publishers; that the vendors were kept under the surveillance of the wholesalers; that the wholesalers were authorized to check in a vendor if he failed to perform

properly, or report infractions to the publisher who could then discontinue further sales to the vendor or report his conduct to the Union for discipline by Union agents; that the vendors were required to sell their papers complete with sections in the order designated by the publishers; and that the vendors were required to display only newspapers on the stands or racks which were furnished by the publishers at the latters' expense (R. 42).

To demonstrate the inaccuracy of the assertion that the publishers selected the vendors, it should be sufficient to point out that the right to contract necessarily includes the right to select the person with whom the contract is to be made. This being so, it follows that not only the publishers, but also the vendors, had the right of selection. The latter had the right to select the publisher of any of the four San Francisco newspapers.

As to the fixing of the place, attention is directed to the fact that the arrangement between a publisher and each individual vendor was one made with respect to a particular corner, and that the arrangement once being made, the vendor remained entitled to sell at retail to the exclusion of others on that corner as long as he did not default in his obligations and the corner was not discontinued. The mere circumstance that a contract fixes the place of performance thereunder does not of itself indicate that there is, or is not, an employer-employee relationship. In the case of *Anglim vs. Empire Star Mines Co., Ltd.* (C. C. A. 9th Cir. 1942), 129 F (2d) 914, the agreement there under

examination was held to create an independent contractor relationship although the place of performance was specifically limited to designated portions of the mine. Specifying in a contract the territory to be covered thereby is the usual practice where a manufacturer chooses this method of providing for the wholesale or retail sale of his product. The territory was specified in the contract with a wholesale oil distributor in *Indian Refining Co. vs. Dallman* (D. Ct. S.D. Ill. 1940), 31 F. Supp. 455, aff. 119 F (2d) 417, and in the contract for a retail outlet in *Nevin, Inc., vs. Rothensies* (D. Ct. E.D. Pa. 1945), 58 F. Supp. 460, aff. 151 F (2d) 189. In both cases, the independent status was upheld under the Social Security Act. Indeed, it could fairly be said that the specification of the territory in such cases is more characteristic of the independent contractor relationship than of the employment relationship.

It is true that the selling hours were specified by the publishers, subject, however, to the limitations contained in the contract which prescribed the maximum hours per day and per week. In view of the "perishable" nature of a newspaper, the selling period has to conform to the times when the papers are in demand and are published and available for distribution, which, in turn, are dictated by circumstances largely beyond the control of either the publishers or the vendors—the reading habits of the public, breaks in the news, etc. Thus, the hours could not be fixed at the whim of the publishers. In any event, the fixing of hours is immaterial. In the *Greyvan* case, the inde-

pendent status was upheld even though the truckers were instructed as to "where and when to load freight." Leaders of "name" dance bands contract to play during certain hours, but are, nevertheless, independent contractors. See *Bartels vs. Birmingham* and *Geer vs. Birmingham,* 91 L. Ed. (Ad. Op.) 1584. In those cases, as in our case, the hours are actually fixed by public demand and circumstances beyond the control of either contracting party. Our case also presents the situation which obtained in *U. S. vs. Aberdeen Aerie No. 24* (C. C. A. 9th Cir. 1945), 148 F (2d) 655. There, the doctor's hours were fixed by the contract, although he was free to attend any patients provided he served the members of the Lodge. Similarly, the vendors were free during the selling hours to sell anything they desired, in any way they chose, provided they offered newspapers for sale.

Contrary to the District Court's finding, the profits received by the vendors were in no sense controlled by the publishers. They were the difference between the wholesale and retail prices of the papers the vendors sold less any and all losses incident to the vendors' business operations. The contract, concluded only after extended negotiations, fixed both the wholesale and retail prices for the term thereof. Furthermore, the vendors were free to sell other publications and articles, and many did.

The use of the word "surveillance" in connection with the activities of the wholesalers carries an implication which has no reasonable support in the record. The wholesalers' job was to deliver papers as they

came off the press, to pick up the unsold papers, to collect from the vendors, i.e., check them in (R. 28, 191, 344). If they saw any default or misfeasance on the part of a vendor, they reported it. The situation was, therefore, much the same as in the case of any wholesaler dealing with its retail customers.

The District Court's opinion relative to the right to discontinue sales contains inconsistencies. In the District Court's statement of facts, it is said (R. 27): "Prior to the first contract of August 1937, the services of a vendor were terminable at the will of the publisher. Thereafter, a vendor once engaged to sell at a particular location, was entitled by each of the successive contracts, to man that location so long as it was maintained by the publisher, unless there should arise just cause for the discontinuance of further deliveries of papers to him (e.g. drunkenness, failure to appear for work, etc.) or for his transfer from one location to another, in which event the publisher was entitled to effect such discontinuance or transfer. If a vendor felt that his contract to sell at a particular location had been unjustly discontinued by the publisher,—that is, without cause,—he could have the matter submitted to and determined by arbitration." This was also the substance of the District Court's finding in its formal Findings of Fact (R. 67, Finding 14). Notwithstanding this, the District Court states as one of the reasons it held that the vendors were controlled: "He [the wholesaler] was authorized to check in the vendor if the latter failed to so perform or to report any such infraction to the publisher,

who could then discontinue further sales to the vendor, or report his conduct to the union for discipline by union agents" (Emphasis added) (R. 42).

The District Court was correct in finding that sales could be discontinued only for cause (Appendix III, the Contract, Secs. 34, 36). This is consistent with a buyer and seller relationship but inconsistent with most employment relationships where the employee may be dismissed at will. The right to terminate a contract for cause is no indicia of an employment arrangement. It is a provision quite common to all contracts. See *Anglim vs. Empire Star Mines,* supra. Indeed, in the *Greyvan* case, the contract was terminable not only for cause, but at the will of either party.

The District Court also seems to have attached some significance to the publisher's right to discontinue a corner. This is similar to the usual right to discontinue an independent agency. Such right is of no practical significance because, although the manufacturer can discontinue the arrangement, he thereby loses that outlet. This point was discussed by Judge Learned Hand in his opinion in the case of *Texas Co. vs. Higgins* (C.C.A. 2nd Cir. 1941), 118 F (2d) 636, 638, in which he said:

> "The defendant denies that the plaintiff had no more control than this; he argues that the power to end the agency and take over the plant at cost, gave it absolute power over the business, because by this sanction it could not only intervene when and as it chose, but could direct the details of every move made. We cannot agree. The charac-

> ter of the relation was determined by the rights and obligations assumed, and it is no answer that the plaintiff could force a change in these by threatening to terminate the agency."

The District Court points to the fact that the vendors were required to sell their papers complete with sections in order as designated by the publishers. Could it be argued that the manufacturer or wholesaler of vacuum cleaners would continue to do business with any retailer who sold its products with some of the parts missing or improperly assembled?

As opposed to the asserted facts above mentioned upon which the District Court has based its conclusion that the vendors were under the control of the publishers, the true facts show that the vendors were uncontrolled in the manner of doing their business. These facts are: that the vendors were not required to report, and did not report, to the publishers' premises in connection with any of their work (R. 361); they were not required to attend, and did not attend, any sales meetings (R. 354); they were not required to file, and did not file, any reports (R. 361); neither the publishers, nor any of their representatives, including the wholesalers, had the right to direct the vendors in the performance of their business (R. 344, 191, 28); as above shown, the vendors could not be fired—the most the publishers could do in this regard was to terminate the individual contract when a vendor failed in the performance of his obligations. Even then, justification for such termination was subject to review. These circumstances outweigh those relied upon by the Dis-

trict Court, and indicate that the vendors were free of all control at the hands of the publishers except only as to the results to be accomplished. Notwithstanding this, the District Court has expressly disregarded them; in effect, dismissing them as being of no importance. Its language is (R. 46): "These were at most details of this particular service relationship in operation. They did not alter the essential factors establishing, by their presence, the employment relationship, or change their character in context."

In short, appellants do not assert a complete absence of any control, but say that such controls as do exist are those which are commonly found in a buyer-seller relationship. As the court said in the case of *Nevin, Inc., vs. Rothensies* (D. Ct. E.D. Pa. 1945), 58 F. Supp. 460, 462, aff. 151 F (2d) 189:

> "The relationship between the plaintiff and the licensees is, in short, that of a wholesaler who, in order to assure a market for his goods, has contracted with retailers that they should buy exclusively from him, allowing them, as an inducement, to use his name and good will, and of retailers who, in exchange for this benefit, have surrendered such powers to the wholesaler as were necessary for the protection of this good will."

Again, it is said in *Indian Refining Co. vs. Dallman* (D. Ct. S.D. Ill. 1940), 31 F. Supp. 455, 458, aff. 119 F (2d) 417:

> "Manufacturers of nationally advertised products frequently impose many conditions on the merchants who sell such products. They also are cooperative with the merchant and aid in every

way possible the sales of their merchandise. For example, a manufacturer will frequently operate a booth in a department store for the purpose of demonstrating and acquainting the public with his products. If in the case at bar Kolb and his employees are held to be employees of the Indian Refining Company, it would be but a step further to hold many merchants to be employees of manufacturers."

(b) Other Pertinent Factors.

In addition to the basic factor of control, there are other factors which are helpful in determining status. In the *Greyvan* case, the Supreme Court mentioned "opportunities for profit or loss, investment in facilities, permancy of relation and skill required in the claimed independent operation * * * ." To this must be added, in view of the Supreme Court's decision, the factor of intent.

It is believed that these additional factors can be characterized as common attributes of an independent business. Each of them is often, but not necessarily, present when a business is independent.

In this case all of these additional factors were present, some in a greater and some in a lesser degree. The significant facts relevant to these factors were: Some of the vendors sold one newspaper only; many sold at least two (R. 348)—in fact, practically all who sold the Examiner also sold the Chronicle, and many who sold the Call-Bulletin also sold the News; about one-sixth sold publica-

tions other than appellants' newspapers, such as racing forms, twenty-five cent pocket books, and the Peoples World (R. 226-331, 310). Many sold various articles such as candy bars, gum, pencils, and razor blades; some developed and conducted large news stands on which were sold all manner of articles. These large news stands varied in number from ten to thirty-five (R. 226-231, 310, P. Ex. 48A-H). The vendors hired substitutes and relief-men at their own expense (R. 358). The vendors were responsible for the papers delivered to them, and bore the loss in case they were lost, destroyed, or stolen (R. 185). Some developed regular customers to whom they sold on credit, thereby taking the credit risk (R. 184).

Referring to the various additional factors abovementioned, it heretofore has been pointed out that there is a permanency of the relation in the sense that a vendor's contract for a particular corner cannot be terminated by the publisher except for cause. This type of permanency is typical of the status of such retailers as the distributors of Ford cars. It is not typical of the employment status which ordinarily may be terminated at the employer's will.

Although the arrangement between the publishers and the vendors was uniform throughout, it is obvious that the profits of each individual vendor were dependent in a very large measure upon how he carried on his business. Some were energetic and ambitious, and their profits were higher accordingly. Some had attractive personalities and a manner of dealing with the public which developed good will and thus mate-

rially increased their sales. It is common knowledge that many men will pass by several vendors to purchase their papers from a particular vendor. In addition, some of the more enterprising vendors were not content merely with the sale of one or more newspapers and so added other publications and articles to their lines. In short, the vendors were free, according to their desires, to carry on their businesses generally as they saw fit, and what they did was necessarily reflected in the amount of their profits.

The opportunity for investment was not limited in any way by the arrangement between the parties. Those who developed large news stands obviously had a moderate investment. A vendor who had one of the better corners had a valuable right. However, the investment feature is unimportant in determining the status of the vendors. No substantial investment is required for the retail sale of newspapers. Because this is true, an opportunity was, and is, afforded men with very limited means and who are frequently victims of physical handicaps, to engage in an independent business. That this is important in their minds is demonstrated by the fact that the Union appears as amicus curiæ to preserve their independent status.

The District Court gave undue emphasis to the admitted fact that the vendor did business on a relatively small scale and without a large investment of capital. The size of an operation is not determinative of its character. A small retailer can be just as independent in his operations as a large one, and a vendor's desire to operate in his own way and free from the control of

the publishers should not be denied him because his operations are small.

Counsel for the Government have made much of a statement by one witness that there is only one way to sell a newspaper. The answer was a correct one to the particular question asked the witness (R. 181). In a physical sense, there is only one way to sell a newspaper, that is, hand it to the customer, just as there is only one way for a retailer to sell a pack of cigarettes —hand it to the customer. That is what the witness meant. He did not mean, nor say, nor is it true, that there is only one way in which to develop the sale of newspapers.

No discussion of the independent status of these vendors would be complete without reference to the wishes of the parties themselves. The parties have deliberately and fairly framed successive contracts to maintain an independent relationship, and both desire that it be recognized. It is true that, on some matters of basic policy, the wishes of the parties must be ignored; but no sound reason can be, or has been, suggested why this should be done in the instant case. There is nothing in the Social Security Act which suggests that those charged with its enforcement should substitute their ideas as to what is best for the parties, for those of the parties themselves, when to do so changes a normal and long-established business relationship. As before pointed out, the Supreme Court has made it clear in the *Greyran* case that it sees nothing in the Act to suggest that normal business relationships are to be disturbed. This court had occa-

sion to discuss this issue in the case of *Anglim vs. Empire Star Mines Co.* (CCA 9th Cir., 1942), 129 F (2d) 914. There, the court was dealing with a situation similar to this, where the individual lessee miners, with little or no capital invested, preferred to maintain their independent status, leaving their profits to depend on their individual initiative and skill. In holding that they were entitled to maintain that independent status, the court said (p. 917):

> "The typical leaser is the resourceful miner who prefers the speculative rewards, along with the risks, of operating on his own account. There was in the practice here no element of calculated tax avoidance. The taxpayer's leasing program was inaugurated years before the Social Security Act was placed on the books. We entertain no doubt that these leasers should be classed as independent contractors. We are not unmindful of the beneficent purposes of the Act, but the extension of its benefits to wider fields is not the business of the courts."

Much the same observations and reasons are applicable to the instant case.

IV.

CONGRESS NEVER INTENDED A CONSTRUCTION OF THE SOCIAL SECURITY ACT WHICH WOULD PERMIT THE VENDORS TO BE CLASSED AS EMPLOYEES.

The history of the Social Security Act and of the regulations issued thereunder demonstrates that Congress never intended the vendors to be covered by the Act.

The original Social Security Act, as introduced in the House (H.R. 4120), contained a lengthly definition of the term "employee," part of which was: "the term 'employee' shall include every individual . . . under any contract of employment or hire, oral or written, express or implied."

This definition was rejected, and the word "employee" was undefined except that Section 1101 (a) (b) (See Appendix I, Sec. 1426(d)) provided as follows:

> "The term 'employee' includes an officer of a corporation."

Officers of a corporation were, no doubt, expressly included only because they would have been excluded under the common law concept of master and servant, which it was the intention of Congress to follow.

In 1938, the Board made recommendations for amendments to the Social Security Act. These recommendations were transmitted to Congress with a special message by the President on January 16, 1939. As a result, H.R. 6635 was introduced, and extensive hearings were held thereon by the Ways and Means Committee of the House and later by the Senate Finance Committee. The Board recommended, among other things, that definitions contained in the Act be expanded to include more persons than would come under the classical definition of "an employee." While extensive amendments were passed by Congress in 1939, no amendment enlarging the definition of "employee" was enacted.

This history establishes that Congress intended no one should be covered by the Act who did not constitute an employee under ordinary concepts.

If the view of the Treasury Department may be judged by its regulation under the Social Security Act defining the terms "employer" and "employee," (Appendix II), it has entertained no doubt that the word "employee" was used by Congress in its ordinary sense. The regulation sets forth the normal tests, emphasizing particularly control over the manner and means of doing the work. This regulation was in force at the time the 1939 amendments were rejected by Congress, and has been in force up to the present time.

The District Court based its decision in large part on a dictum in the *Hearst* case *(N.L.R.B. vs. Hearst Publications,* 322 U.S. 111, 88 L. Ed. 1170, 64 S. Ct. 851) to the effect that technical common law concepts as to what constitutes an employee are not to be controlling under social legislation. As heretofore shown, the Supreme Court reaffirmed that statement in the *Greyvan* and *Silk* cases, but it added that, notwithstanding this, Congress showed no intention to disturb normal business relationships; that to be covered by the Act, a person must be an employee; that the Regulations issued under the Act set forth a definition of "employee"; and that under all of the circumstances in the case, the two groups of truckers were independent contractors. The Supreme Court specifically referred to the ordinary tests as being the significant ones, namely—control, individual initiative, etc. Therefore, appellants reassert that the doctrine first

announced by way of dictum in the *Hearst* case, and later stated, also by way of dictum, in the *Greyvan* and *Silk* cases, is not a license to the Commissioner to reach out and bring within the coverage of the Act everyone who he considers needs the benefits thereof.

Referring more particularly to the *Hearst* case, it is important to observe that the Supreme Court in that case did not hold vendors to be employees. Long prior to that decision, the Supreme Court had adopted a steadfast rule that a finding of the agency charged with the enforcement of the Wagner Act, namely, the National Labor Relations Board, would not, and could not under the wording of the law, be disturbed if it was supported by any evidence. (*N.L.R.B. vs. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 86 L. Ed. 1305, 62 S. Ct. 960.) The Supreme Court expressly followed that rule in the *Hearst* case. The Board had found that the vendors therein involved were employees; the Supreme Court could not under its rule disturb the finding. What the same court would have done had it been free to appraise the facts, is a matter of speculation. What the Supreme Court did in the *Silk* and *Greyvan* cases is a matter of record. It is noteworthy that this Circuit Court of Appeals in that case did not leave its own views to speculation. The majority of the judges were of the opinion, and so found, that the Board's finding that the vendors were employees was not supported by substantial evidence. Judge Denman dissented, not because he differed from the other judges who held the vendors to be independent contractors, but only because he felt bound to ac-

cept the Board's finding. The same situation does not exist in the instant case. There is no rule or statute imposing the Commissioner's findings on this court. This court is free to base its decision on the facts as presented concerning the particular vendors, just as the Circuit Court of Appeals did in the *Greyvan* and *Silk* cases.

While the decision in the *Hearst* case can be dismissed with the foregoing observations, it is also true that there are significant factual differences between that case and the instant one.

Furthermore, if the *Hearst* case is given the interpretation which the lower court gave it, Congress has made it clear that such an interpretation is contrary to its intent. In its amendments to the Wagner Act, set forth in the Labor Relations Act of 1947, Congress amended the definition of "employee" so as expressly to exclude independent contractors. This amendment originated in the House and the reason for it is set forth in the Committee Report on H.R. 3020 by House Committee on Education and Labor, being Report No. 245, 80th Congress, 1st Session, in the following words:

> "(d) An 'employee', according to all standard dictionaries, according to the law as the courts have stated it, and according to the understanding of almost everyone, with the exception of members of the National Labor Relations Board, means someone who works for another for hire. But in the case of National Labor Relations Board v. Hearst Publications, Inc. (322 U.S. 111 (1944), the Board expanded the definition of the term 'employee' beyond anything that it ever had in-

cluded before, and the Supreme Court, relying upon the theoretic 'expertness' of the Board, upheld the Board. In this case the Board held independent merchants who bought newspapers from the publisher and hired people to sell them to be 'employees.' The people the merchants hired to sell the papers were 'employees' of the merchants, but holding the merchants to be 'employees' of the publisher of the papers was most far reaching. It must be presumed that when Congress passed the Labor Act, it intended words it used to have the meanings that they had when Congress passed the act, not new meanings that, 9 years later, the Labor Board might think up. In the law, there always has been a difference, and a big difference, between 'employees' and 'independent contractors.' 'Employees' work for wages or salaries under direct supervision. 'Independent contractors' undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon the difference between what they pay for goods, materials, and labor and what they receive for the end result, that is, upon profits. It is inconceivable that Congress, when it passed the act, authorized the Board to give to every word in the act whatever meaning it wished. On the contrary, Congress intended then, and it intends now, that the Board give to words not farfetched meanings but ordinary meanings. To correct what the Board has done, and what the Supreme Court, putting misplaced reliance upon the Board's expertness, has approved, the bill excludes 'independent contractors' from the definition of 'employee'."

Concluding this point, it is submitted that in view of the foregoing, to hold that these vendors were employees would extend the Social Security Act far beyond the intent of Congress and, hence, be judicial legislation. The courts have repeatedly refused to countenance undue expansion of the application of the Social Security Act by the Commissioner. Thus, the effort to bring independent truckers within the coverage of the Act was not countenanced in the *Greyvan* and *Silk* cases. The effort to bring independent miners within the coverage of the Act was not countenanced by this court in the *Anglim vs. Empire Star Mines* case, supra. The effort to bring independent home workers within the coverage of the Act was not countenanced by the Sixth Circuit Court in the case of *Glenn vs. Beard,* 141 F. (2d) 376. The effort to bring a doctor within the coverage of the Act was not countenanced by this court in the case of *United States vs. Aberdeen Aerie No. 24,* supra. The effort to bring an independent operator of a retail store within the coverage of the Act was not countenanced by the Third Circuit Court in the case of *Nevin, Inc. vs. Rothensies,* supra. The effort to bring consignee distributors of oil products within the coverage of the Act was not countenanced in the case of *Texas vs. Higgins,* supra. This case presents a similar effort which, as in the cases just mentioned, and on the principles therein announced, also should not be countenanced.

CONCLUSION.

In conclusion, appellants respectfully submit that the vendors were independent contractors and not employees under the Social Security Act, and that the judgments of the District Court should, therefore, be reversed.

Dated, San Francisco, California,
February 27, 1948.

REGINALD H. LINFORTH,
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(Appendices Follow.)

Appendices.

Appendix I

RELEVANT PROVISIONS OF FEDERAL INSURANCE CONTRIBUTIONS ACT.

(From 26 U.S.C.A.—Int. Rev. Code.)

Sec. 1400. Rate of tax.

In addition to other taxes, there shall be levied, collected, and paid upon the income of every individual a tax equal to the following percentages of the wages (as defined in section 1426 (a)) received by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages received during the calendar years 1939, 1940, 1941, and 1942, the rate shall be 1 per centum.

Sec. 1401. Deduction of tax from wages.

(a) Requirement. The tax imposed by section 1400 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid.

Sec. 1410. Rate of tax.

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 1426 (a)) paid by him after December 31, 1936, with respect to employment (as defined in section 1426 (b)) after such date:

(1) With respect to wages paid during the calendar years 1939, 1940, 1941, and 1942, the rate shall be 1 per centum.

Sec. 1426. Definitions.

When used in this subchapter—

(a) Wages. The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year, is paid to such individual by such employer with respect to employment during such calendar year;

* * * * * * *

(b) Employment. The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, by an employee for the person employing him, irrespective of the citizenship or residence of either, * * *

* * * * * * *

(d) Employee. The term "employee" includes an officer of a corporation.

RELEVANT PROVISIONS OF FEDERAL UNEMPLOYMENT TAX ACT.

(From 26 U.S.C.A.—Int. Rev. Code.)

Sec. 1600. Rate of tax.

Every employer (as defined in section 1607 (a)) shall pay for the calendar year 1939 and for

each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment (as defined in section 1607 (c)) after December 31, 1938. * * *

Sec. 1607. Definitions.

When used in this subchapter—

(a) Employer. The term "employer" does not include any person unless on each of some twenty days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was eight or more.

(b) Wages. The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

* * * * * * *

(c) Employment. The term "employment" means any service performed prior to January 1, 1940, which was employment as defined in this section prior to such date, and any service, of whatever nature, performed after December 31, 1939, within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either, except—

* * * * * * *

(i) Employee. The term "employee" includes an officer of a corporation.

Substantially the same provisions were contained in Title VIII and Title IX of the Social Security Act before its amendment.

Appendix II

TREAS. DEPT. REG. 107, SEC. 403.204.

Who are employees.—Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee. (The word "employer" as used in this section only, notwithstanding the provisions of section 403.201 (a), includes a person who employs one or more employees.)

Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent

contractor. An individual performing services as an independent contractor is not as to such services an employee.

Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, co-adventurer, agent, or independent contractor.

The measurement, method, or designation of compensation is also immaterial, if the relationship of employer and employee in fact exists.

No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees. An officer of a corporation is an employee of the corporation but a director as such is not. A director may be an employee of the corporation, however, if he performs services for the corporation other than those required by attendance at and participation in meetings of the board of directors.

Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment within the meaning of the Act (see section 403.203).

This Regulation, issued under the Federal Unemployment Tax Act, is substantially the same as that issued under the Federal Insurance Contributions Act and prior regulations issued under the Social Security Act.

Appendix III

AGREEMENT.

THIS AGREEMENT, made and entered into this twenty-eighth day of May, 1940, by and between SAN FRANCISCO NEWSPAPER PUBLISHERS' ASSOCIATION, as the representative and authorized agent of the CHRONICLE PUBLISHING COMPANY, Publisher of SAN FRANCISCO CHRONICLE; HEARST PUBLICATIONS, INC., for the SAN FRANCISCO CALL-BULLETIN Department thereof; DAILY NEWS COMPANY, LTD., Publisher of THE SAN FRANCISCO NEWS; and HEARST PUBLICATIONS, INC., for the SAN FRANCISCO EXAMINER Department thereof, hereinafter referred to collectively as the "PUBLISHERS" and individually as the "PUBLISHER" and the NEWSPAPER AND PERIODICAL VENDORS' AND DISTRIBUTORS' UNION No. 468, affiliated with INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, hereinafter referred to as the "UNION", for itself and as the authorized agent of its members,

WITNESSETH:

The parties hereto hereby agree to and accept all of the terms, provisions, conditions, and definitions hereinafter set forth, to wit:

Section 1. Each of the parties hereto agrees that the intent of this Agreement is to maintain the relationship of seller and buyer, and not the relationship of employer and employee, and neither party hereto will construe anything herein, and nothing herein

shall be construed, otherwise than in accordance with this expression of the intent hereof.

Section 2. This Agreement shall apply to the sale of newspapers of the Publishers by News Vendors coming under the terms of this Agreement in the City and County of San Francisco.

(a) For the sale of evening newspapers in the City and County of San Francisco said City is divided into zones described as follows:

Zone One: Starting at the Embarcadero at Washington Street and continuing out both sides of Washington Street to Van Ness Avenue, thence south on both sides of Van Ness Avenue to Market Street, thence across Market Street to Eleventh Street, thence along both sides of Eleventh Street to Howard Street, thence along both sides of Howard Street to Third Street, thence along both sides of Third Street to Townsend Street, thence along both sides of Townsend Street, including Southern Pacific Station, to the Embarcadero, thence along the Embarcadero to Washington Street, including safety zone intersections.

Zone Two: Starting at the intersection of Washington Street and Van Ness Avenue and extending along both sides of Van Ness Avenue to Bay Street, thence along both sides of Bay Street to Laguna Street, thence along Laguna Street to Chestnut Street, thence along both sides of Chestnut Street to Scott Street and thence returning along Chestnut Street to Fillmore Street, thence along both sides of Fillmore Street to

Haight Street, thence along both sides of Haight Street to Market Street and thence along both sides of Market Street to Van Ness Avenue, thence along the line of Van Ness Avenue to Washington Street; including safety zone intersections.

Zone Two (a): Starting at intersection of Market and Valencia Streets, thence along West line of Valencia Street to Mission, thence along Mission to 29th; thence returning along South line of Mission to Van Ness Avenue South, thence along East line of Van Ness Avenue South to the South line of Market Street, including safety zone intersections.

Zone Three: All that part of the City and County of San Francisco not included within Zone One (1), Zone Two (2) and Zone Two (a).

(b) The Publishers agree that in Zone One contracts for the sale of evening newspapers will during the term of this Agreement be offered to News Vendors coming under the terms of this Agreement (in accordance with provisions of Section 12) and to newsboys under the age of eighteen (18) years in the ratio of five (5) News Vendors to three (3) newsboys and the Publishers will maintain said ratio during said term.

(c) The Publishers agree that in Zone Two (2) contracts for the sale of evening newspapers will during the term of this Agreement be offered to News Vendors coming under the terms of this Agreement (in accordance with provisions of Section 12) and to newsboys in the ratio of one (1) News Vendor to two

(2) news boys and the Publishers will maintain said ratio during said term.

(d) In Zone Two (a) The Publishers will offer contracts for the sale of evening newspapers to News Vendors coming under the terms of this Agreement and to newsboys in the ratio of one (1) News Vendor to thirteen (13) newsboys and the Publishers will maintain said ratio during said term.

(e) In Zone Three the Publishers will offer contracts for the sale of evening newspapers to News Vendors coming under the terms of this Agreement and to newsboys without any limitation as to ratio between News Vendors coming under the terms of this Agreement and newsboys.

(For the sole purpose of checking the observance of the ratio of News Vendors to newsboys established in Zones One, Two and Two (a), the Publishers agree upon request to furnish a list of newsboy corners and News Vendor corners in such Zones and further agree to notify the Union promptly when changes are made in such list.)

(f) On both morning and evening newspapers whenever the weekly profits of a newsboy on any corner shall equal or exceed the Part Time Corner weekly guarantee in this Agreement provided for, such newsboy shall be replaced by a Part Time Corner News Vendor, a member of the Union in good standing and acceptable to the Publisher or Publishers, who is available, and further provided that if the replacement so made shall result in exceeding the ratio of

Part Time to Full Time Corners fixed by Section 14 of this Agreement, such replacement shall be designated a "temporary Part Time Corner News Vendor".

Section 3. (a) The Publishers and the Union agree that for the sale of morning newspapers (Sunday excepted) in the City and County of San Francisco each Publisher of a morning newspaper may enter into contracts with not to exceed a total of 80 newsboys to cover the sales of both the a.m. and p.m. selling periods.

(b) In the application and interpretation of this section, it is agreed that newsboys shall sell either on the basis of joint representation or exclusive representation (as the publisher and/or publishers shall determine) provided, that in the event a newsboy sells on the basis of joint representation that such newsboy shall count as one (1) of the newsboys for each of the morning newspapers.

Section 4. (a) For the sale of Sunday newspapers in the City and County of San Francisco, both publishers of Sunday newspapers may enter into contracts with not to exceed a combined total of 175 newsboys to cover the sales of both the Saturday night and Sunday morning selling periods; provided, that newsboys shall sell either on the basis of joint representation or exclusive representation (as the publisher and/or publishers shall determine); but in no event shall the combined total of newsboys for the sale of both Sunday newspapers on Saturday night and Sunday morning exceed 175.

(b) For the sale of morning and Sunday newspapers, newsboys shall not sell on the same corner of an intersection in direct competition with the News Vendor.

(c) It is further agreed that each publisher of a Sunday newspaper may enter into contracts for the sale of Sunday newspapers with junior sales boys without limitation as to number, provided such junior sales boys shall sell at large and shall not remain stationary on any corner.

Section 5. For the sole purpose of checking the observance of the limitation of newsboys of morning newspapers as established in Sections 3 and 4, the Publishers agree upon request to furnish a list of newsboy corners and further agree to notify the union promptly when changes are made in such list.

Section 6. The News Vendors who come under the terms of this Agreement are those who shall engage in the sale of newspapers of the Publishers as hereinafter provided for under the terms of Section Thirteen (13) hereof.

Section 7. The Publishers recognize the Union as the sole collective bargaining agency for all News Vendors coming under the terms of this Agreement.

Section 8. The newspapers of each Publisher on a daily or Sunday paper shall be sold at the retail price established by such Publisher.

Section 9. (a) Newspapers shall be purchased from each Publisher at the wholesale price established by each Publisher for the newspapers which it pro-

duces and payment to each Publisher for any newspapers so purchased shall be made at said wholesale price. It is agreed that the present practice of making payment toward the end of the selling period or after each edition shall be continued.

(b) Each Publisher agrees that its wholesale price so established shall be uniform to News Vendors selling single copies on the public streets of the City and County of San Francisco and such wholesale price shall not be lower to any other selling agency ("carriers" excepted) in said City and County. It is agreed that Publishers' sale to "carriers" for delivery to subscribers shall not be subject to the provisions of this Agreement. Sales to "carriers" for sales of single copies on the public streets of the City and County of San Francisco shall, however, be subject to all the provisions of this Agreement.

Section 10. The Publishers agree that during the term of this agreement the retail price of newspapers herein specified shall not be changed and that the wholesale price of Three ($3.00) Dollars per hundred for newspapers retailing at Five (.05) cents a copy or Seven and 50/100 ($7.50) Dollars for Sunday newspapers retailing at Ten (.10) Cents per copy shall not be changed.

Section 11. The profit arising from the difference between the retail prices and the wholesale prices shall belong to the News Vendor.

Section 12. When there exists a vacancy at any corner as defined in Sections 13, 14 and 15, preference shall be given to any available member of the Union

in good standing acceptable to the Publisher or Publishers concerned. The Publisher agrees to notify the Union when a vacancy exists, giving the location of such corner, and at the time such notice is given, the Union agrees to furnish a list of all available News Vendors. The Publisher or Publishers shall have the right of selection from all available News Vendors. If no member of the Union, acceptable to the Publisher or Publishers concerned, is available when a vacancy exists, such Publisher or Publishers may enter into a contract for the sale of newspapers with any person and such person may continue with said contract for the sale of newspapers until such time as a member of the Union, acceptable to the Publisher or Publishers concerned, is available. Upon the happening of which event the Publisher or Publishers will offer to said member of the Union a contract to sell newspapers, provided, however, that such Publisher or Publishers shall not be required to terminate its contract with any person not a member of the Union who has a contract to sell newspapers, before the end of the current day or night period, during which he is selling under such contract.

(It is agreed that when in the opinion of the Union a Publisher and/or Publishers has determined that a News Vendor is unacceptable, that the Publisher and/or Publishers will discuss the reason therefor with the Business Agent of the Union and if Agreement is not mutually reached it shall be settled by the Standing Committee, or by an Arbitration Board which has full power to determine the acceptability of said News Vendor.")

Section 13. (a) A "News Vendor" is hereby defined to be a person over the age of eighteen (18) years who purchases newspapers at wholesale from a Publisher or Publishers, and resells the same at retail at a Full Time Corner, or Part Time Corner, or Special Wrapped Edition Corner, or Special Event Corner, or at large under the terms of this Agreement. A "Newsboy" is hereby defined to be a person under the age of eighteen (18) years of age who purchases newspapers at wholesale and resells same at retail on corners as designated and limited by the Publisher.

(b) A "Full Time Corner" is hereby defined to be a location on the public streets of the City and County of San Francisco as designated and limited by a Publisher or Publishers at which a News Vendor actually offers newspapers for sale at retail—

1. For the sale of evening newspapers forty-six (46) hours each week of six (6) days, such hours to be divided at the Publisher's discretion, provided the Publisher shall not designate any such hours to exceed eight (8) hours within nine (9) consecutive hours in any one day;

2. For the sale of morning newspapers forty-six (46) hours each week of six (6) days, such hours to be divided at the Publisher's discretion, provided, however, that on four (4) week days the maximum hours shall not exceed seven (7) hours within eight (8) consecutive hours and on Saturdays and Sundays the hours shall not exceed Ten (10) hours within eleven (11) consecutive hours.

(c) A "Part Time Corner" is hereby defined to be a location on the public streets of the City and County of San Francisco as designated and limited by a Publisher or Publishers at which a News Vendor actually offers newspapers for sale at retail during four (4) consecutive hours or less, at the Publisher's discretion each day, at least six (6) days of each week. The Publisher or Publishers (if such Part Time Corner be a consolidated corner) may establish the daily hours during which sales of newspapers shall be made at such Part Time Corner.

(d) The Publisher or Publishers, as the case may be, shall designate and limit in its or their discretion, Corners as either a Full Time Corner, a Part Time Corner, a Special Wrapped Edition Corner or a Special Event Corner, provided that nothing herein contained shall be construed to prohibit changing the designation of a Corner from a Full Time Corner to a Part Time Corner, or from a Part Time Corner to a Full Time Corner, or to prohibit the discontinuance of any Full Time Corner or any Part Time Corner, or the re-establishment of any Full Time Corner or Part Time Corner, at the discretion of the Publisher or Publishers.

(e) A "Special Wrapped Edition Corner" is hereby defined to be a location on the public streets of the City and County of San Francisco as designated and limited by a Publisher at which a News Vendor actually offers a Special Wrapped Edition of a newspaper for sale at retail during a temporary period of time to be established by the Publisher con-

cerned. The Publisher may fix the daily hours during which sales of such Special Wrapped Edition shall be made at any Special Wrapped Edition Corner at not to exceed eight (8) hours within nine (9) consecutive hours.

(f) A "Special Event Corner" is hereby defined to be a location at or near the place of holding a sporting event, civic celebration or public gathering, in the City and County of San Francisco as designated and limited by a Publisher or Publishers at which a News Vendor actually offers newspapers for sale at retail. The Publisher (or Publishers, if such Special Event Corner be a consolidated Special Event Corner) may establish the hours during which sales of newspapers shall be made thereat; provided, the period of time a News Vendor sells newspapers at a Special Event Corner shall be in units of four (4) hours.

(g) A "Roving News Vendor" (bootjacker) is hereby defined to be a News Vendor coming under the terms of this Agreement who sells newspapers on the public streets of the City and County of San Francisco at retail at large. The Publisher shall designate the periods and hours when and at which newspapers are to be offered for sale at large; provided, the period of time a Roving News Vendor sells newspapers shall be in units of four (4) hours.

(It is agreed that if the Union cannot upon request furnish Roving News Vendors under the terms of this Agreement, the Publisher may enter into a contract

for the sale of newspapers at large with any person and such person, with the exception of the provisions of Section 9 (b), need not come under the terms of this Agreement and such Publisher shall not be required to terminate such contract before the end of a four (4) hour selling period, except that for the extra sale of the Monday morning newspapers on Sunday afternoon and evening only, each morning newspaper will notify the Union of the number of Roving News Vendors that will be desired and will give to the Union four days' notice of any change in that number, and any adjustment of the profit guaranteed such Roving News Vendors shall be paid by not later than the Thursday following such sale.)

Section 14. The Publisher (or Publishers, if such corner be a consolidated corner) shall designate each Corner whether Full Time, Part Time, Special Wrapped Edition Corner, or a Special Event Corner where the newspapers produced by it or them shall be sold, and each of said Publishers shall in its or their discretion contract for the sale of said newspapers (other than Special Wrapped Edition) upon a basis of exclusive representation or joint representation, as the Publisher (or Publishers as the case may be) shall determine. The Publishers agree that during the term of this Agreement the ratio of Part Time Corners to Full Time Corners shall not exceed one such Part Time Corner to every three Full Time Corners.

Section 15. Each Publisher may discontinue sales to any News Vendor and discontinue or withdraw

from participation in any Full Time Corner or Part Time Corner, and may contract for sales at any new Full Time Corner or Part Time Corner which it may from time to time select.

Section 16. (a) Each Full Time Corner News Vendor who sells newspapers at retail at a Full Time Corner—

1. For the sale of evening newspapers forty-six (46) hours each week of six (6) days as set forth in Section 13 (b), Paragraph 1,

2. For the sale of morning newspapers forty-six (46) hours each week of six (6) days as set forth in Section 13 (b), Paragraph 2,

shall be guaranteed a minimum weekly profit of Nineteen ($19.00) dollars by the Publisher (or Publishers jointly if the corner be a consolidated corner) whose newspapers he sells.

(b) Each Part Time Corner News Vendor who sells newspapers at retail at a Part Time Corner during four (4) consecutive hours or less, at the Publisher's discretion each day at least six (6) days of each week and complies with all provisions of this Agreement relating to Part Time Corners shall be guaranteed a total weekly profit of Thirteen-fifty ($13.50) Dollars by the Publisher (or Publishers jointly if the corner be a consolidated corner) whose newspaper he sells.

(c) Any Full Time Corner or Part Time Corner News Vendor may at his discretion answer a call-

back and when such News Vendor reports back on any day after completing his regular hours of sale on a corner for the purpose of selling newspapers of the same Publisher and of the same date shall be guaranteed by said Publisher a profit for the period during which he sells newspapers when so called back equal to one-sixth of the Weekly Part Time Corner guarantee; provided, the period of time a News Vendor sells newspapers on a call-back shall be limited to four (4) hours.

(d) Each News Vendor who sells a Special Wrapped Edition at a Special Wrapped Edition Corner, and who complies with all provisions of this Agreement relating to such Special Wrapped Edition Corner, shall be guaranteed for each day that he sells such Special Wrapped Edition, by the Publisher whose Special Wrapped Edition he sells, a profit equal to one-sixth (1/6) of the weekly profit guaranteed Full Time Corner News Vendors, as hereinabove in this section provided.

(e) Each Special Event Corner News Vendor who sells at a Special Event Corner and complies with all provisions of this Agreement relating to Special Event Corners shall be guaranteed for each period of time for which he sells newspapers of one date a profit equal to one-sixth (1/6) of the weekly part time corner guarantee by the Publisher (or Publishers jointly if the Special Event Corner be a consolidated Special Event Corner) whose newspapers he sells.

(f) Each Roving News Vendor who complies with all the provisions of this Agreement relating to sales

of newspapers at retail at large shall be guaranteed for each period of time during which he sells newspapers of one date, by the Publisher whose newspapers he sells, a profit equal to one-sixth (1/6) of the weekly Part Time Corner guarantee, provided such period of time during which he sells newspapers of one date shall not exceed four (4) consecutive hours.

Section 17. The Publishers agree that they will deliver newspapers to News Vendors coming under the terms of this Agreement at all Full Time, Part Time, Special Event or Special Wrapped Edition Corners, except that point of delivery may be at any corner of an intersection, and except further that News Vendors selling newspapers within a radius of three (3) blocks of the publication plant of a newspaper (Special Wrapped Edition Corner excepted, provided they are not just outside the building) may at the discretion of the Publisher concerned be required to take delivery of the first selling edition of the newspaper to be sold by the News Vendor at the publication plant of the Publisher. All checking in shall be at the Corner at which the News Vendor is selling, except that one Corner of an intersection may be designated by the Publisher as a checking in point for all the Corners of an intersection.

Section 18. It is agreed that any News Vendor who has a contract to sell newspapers shall receive from the representative of the Publisher or Publishers whose newspapers he sells a sales slip at the completion of each day showing total papers received and total net sales for that day. Such sales slip shall

be recognized by the Publisher or Publishers as constituting a correct sales record for the day. Such sales slip shall be furnished to the News Vendor at the Corner at which he sells newspapers except that one corner of an intersection may be designated by the Publisher as a point to furnish the sales slip for all the Corners of an intersection.

Section 19. All unsold complete newspapers shall be returned to the Publisher's representative in accordance with the requirements of the Publisher, and if so returned by the News Vendor to whom they were sold by the Publisher, shall be credited to such News Vendor at the wholesale price, such credit to be given at the settlement of each day's sales.

As an interpretation of this Section, it is mutually agreed that:

1. Any News Vendor who has a contract to sell newspapers is entitled to have any newspapers which he has received on a given day from the representative of the Publisher or Publishers whose newspapers he sells and which remain unsold returned to and checked in by a representative of the Publisher or Publishers whose newspapers he sells at the completion of that day. Such picking up and checking in of unsold newspapers shall be done at the Corner at which he sells newspapers, except that one corner of an interesection may be designated by the Publisher as a point for picking up and checking in for all the corners of an intersection.

2. Whenever it shall appear as a matter of fact that it is not reasonably possible for the hours of a

News Vendor to be scheduled so as to carry out the spirit of this section without denying the Publisher or Publishers the right to the hours of representation by the News Vendor as provided for in the Agreement, then the News Vendor shall elect one of the following alternatives:

(a) The News Vendor may make payment toward the end of the selling period, or after each edition as provided in Section 9 (a), for the newspapers received during the day and he shall continue to offer newspapers for sale within not less than fifteen minutes of the completion of the scheduled day's selling period before leaving his Corner and he shall be responsible for unsold papers and he shall return them and receive his sales slip on the following day.

(b) The News Vendor may require a representative of the Publisher or Publishers whose newspapers he sells to check in his unsold papers before the completion of the day and have deducted from the amount which he would otherwise earn or would otherwise be due him at the end of the week a pro-rated amount which shall be determined by the following formula in which "X" equals the amount to be deducted.

$$X = S \times \frac{\text{(Time to which Publisher(s) is entitled—Time Worked)}}{\text{Time to which Publisher(s) is entitled.}}$$

S = The amount of the guaranteed minimum weekly profit.

Section 20. Nothing in this Agreement contained shall be construed to prohibit the use by a Publisher

for the sale of its newspapers of coin racks or mechanical devices or other means or agencies of any kind, provided that as long as the sale of such Publisher's newspaper at a corner shall yield a weekly profit equal to or in excess of 50% of the Part Time Corner guarantee provided for in this Agreement, the Publisher shall not replace a News Vendor with any coin rack or device.

Where there is one News Vendor at an intersection he may operate any coin racks or mechanical devices placed upon the other corners of such intersection for the sale of the newspapers which he sells. Where there is more than one News Vendor at such intersection the Publisher may select the News Vendor who shall operate said coin racks or mechanical devices, provided that no News Vendor shall be required by a Publisher to operate any coin rack or mechanical device, but upon agreeing to do so a News Vendor shall be responsible for all newspapers of the Publisher placed by him thereon. If no News Vendor shall elect to operate coin racks, or mechanical devices placed on other corners as herein contemplated, the Publisher may at its option operate the same.

Any News Vendor who is provided with stands, racks or mechanical devices by a Publisher or Publishers shall not place thereon anything other than newspapers (regular rack cards excepted) which he has a contract to sell.

Section 21. News Vendors shall sell complete newspapers only with all sections thereof in such order

as the several Publishers may designate, and shall assemble newspapers as may be necessary to fulfill this requirement, provided that the Publishers agree that the Sunday newspapers will be delivered in not more than two parts and the daily newspapers will be delivered in one part except that not to exceed three times during each year of this contract daily newspapers may be delivered in two parts.

Section 22. Subject to the observance of all of the terms of this Agreement the Union agrees that it will not interfere with the sale of newspapers of the Publishers through any outlet over which the Union has no jurisdiction.

Section 23. The Publishers agree that as to News Vendors coming under the terms of this Agreement, neither activity in nor on behalf of the Union nor political nor fraternal affiliations nor membership in the Union shall be considered grounds for discrimination on the part of the Publishers in dealing with News Vendors, members of the Union.

Section 24. (a) No car hopping shall be permitted unless the Publishers and the Union agree otherwise as to exceptions to this rule.

(b) Nothing herein contained shall be construed to require members of the Union to accept contracts for the sale of both morning and evening newspapers.

Section 25. When a News Vendor is selected and reports but the Publisher fails to supply him with papers for resale, he shall be entitled to receive a

guaranteed sum equal to one-sixth (1/6) of the weekly profit guaranteed at such corner.

Section 26. The six (6) days which the Full Time or Part Time Corner News Vendor offers newspapers for sale shall be designated by the Publisher, provided, that morning newspapers shall designate the six (6) days to include Saturday and Sunday, unless otherwise agreed upon by the Publisher and/or Publishers and the Union. The Publisher shall give to the News Vendor twenty-four hours' notice of any change of such schedule.

Section 27. The hours during any day or night during which a Full Time Corner News Vendor shall offer newspapers for sale shall be designated by the Publisher provided such News Vendor shall not be required to sell more than five hours without a period of absence from a Corner, except as may be necessary for physical relief; provided further, that as designated by the Publisher, the News Vendor shall have the privilege of taking the full hour period at one time, and that such designated hour period shall be the same for at least one (1) week.

Section 28. (a) In the event a News Vendor desires to discontinue temporarily the sale of newspapers and has good and just cause, the Publishers shall grant in writing a suspension of his contract for a period of discontinuance involved and upon the expiration of such period will renew his contract at his former location, provided he is physically able. Such

period may be extended by mutual agreement between the News Vendor and Publisher.

(b) A News Vendor elected or appointed to office in the Union shall be granted a suspension of his contract for the duration of service on behalf of the Union and the Publisher will renew his contract at his former location upon expiration of such service.

Section 29. (a) News Vendors shall be accountable to the Publisher or Publishers only for newspapers consigned to them and no charge either direct or indirect, other than the wholesale rate for newspapers shall be made to News Vendors for any purpose; provided, any charge for postage on Special Wrapped Editions shall be collected by the News Vendor and remitted to the Publisher or Publishers concerned.

(b) News Vendors shall not be required to offer for sale early editions until his supply of later editions has been sold.

Section 30. The Publishers agree to deal with the business agent of the Union or his authorized representative as the official representative of News Vendors coming under the terms of this Agreement. Each Publisher shall designate one representative on the day side and/or one representative on the night side who shall handle in the first instance such business, disputes, or grievances as may develop.

Section 31. (a) Any News Vendor assigned to a Full Time or Part Time Corner or Corners shall not

be changed from one Corner to another for a period of at least one (1) week unless a change is made by mutual consent between the Union and the Publisher or Publishers concerned.

(b) In event a Publisher discontinues sale of newspapers to any Full Time or Part Time Corner News Vendor, said Publisher shall notify the News Vendor to this effect before or at the completion of his regular selling time on the day or night prior to such discontinuance unless such discontinuance is for cause. The reason or reasons for such discontinuance shall upon request of the Union, be set forth in writing by the Publisher or the Circulation Manager within 72 hours thereafter.

(c) Any News Vendor who has a contract to sell newspapers and who is unable to sell newspapers on any day or night, shall so notify the office of the Publisher or Publishers whose newspapers he sells at least thirty (30) minutes prior to his selling time unless, due to circumstances beyond News Vendor's control it is impossible to give such notice.

(d) In event any Full Time or Part Time Corner News Vendor becomes ill while selling newspapers on any day or night and because thereof it is necessary that the News Vendor vacate his Corner, such News Vendor shall notify the office of the Publisher or Publishers whose newspapers he sells unless due to circumstances beyond News Vendor's control it is impossible to give such notification.

Section 32. The Publishers agree that payment of guarantees shall be made to the News Vendor not later than Wednesday for evening newspapers and not later than Thursday for morning newspapers and that consolidated guarantees shall be made through a consolidated office. In the event of a dispute arising over a guarantee, payment of same shall be withheld until both parties mutually agree upon its adjustment —at which time settlement shall be made.

Section 33. If the Publishers require any special equipment for the proper handling, display and sale of newspapers, said Publishers agree to supply same without cost.

Section 34. Any News Vendor who feels his contract has been unjustly discontinued shall have the right to appeal to the Standing Committee hereinafter provided.

Section 35. News Vendors coming under the terms of this Agreement and selling any newspaper or newspapers produced by the Publisher or any of them and at the same time offering for sale other newspapers, magazines, or publications shall not be guaranteed any profit under the provisions hereof.

Section 36. All disputes arising out of the operation of this Agreement, all disputes regarding the interpretation of any portion of this Agreement, all disputes between any Publisher and any member of the Union (except as in this Section provided) which cannot be settled directly between representatives of the Union and the Publisher or Publishers concerned shall

be submitted to a Standing Committee which shall be appointed within five (5) days after the execution of this Agreement. The Standing Committee shall consist of two (2) representatives of the Publishers and two (2) representatives of the Union, which representatives shall be appointed by their respective organizations. In case of a vacancy on said Standing Committee from any cause, said vacancy shall be filled immediately by the appointment of a new member by the party in whose representation on the Standing Committee the vacancy occurs.

When disputes arise the party desiring a meeting (for the purpose of considering such dispute) shall give notice through its authorized representative to the other party in writing that a meeting is desired. The parties shall then meet within twenty-four (24) hours after receipt of such notice and shall proceed forthwith to attempt to settle any question raised in the written notification. If the parties concerned are unable to agree within twenty-four (24) hours thereafter the matter shall then within twenty-four (24) hours be referred in writing to the Standing Committee as hereinbefore provided.

The Standing Committee shall meet within five (5) days after receipt of such notice given by either party hereto and shall proceed forthwith to settle any dispute raised in the original notification.

It is understood and agreed that the Standing Committee is established by the terms of this Agreement for the settlement of all disputes which cannot be settled directly by the affected parties and that the

Standing Committee is the proper body to settle them finally in the manner herein provided.

The Standing Committee shall have no jurisdiction over the settlement of any new Agreement but said committee shall have complete jurisdiction over all differences as hereinbefore enumerated.

It shall require the affirmative votes of four (4) members of the Standing Committee to decide the issue. Decisions of the Standing Committee shall be final and binding on the parties hereto and such decisions shall be recorded in writing and signed by representatives of both parties hereto.

If the Standing Committee cannot reach an agreement on any dispute within five (5) days (this time may be extended by unanimous agreement) from the date on which a dispute is first considered by it, at the request of either party hereto, the members of the committee shall form a Board of Arbitration and shall select a fifth member, who shall be a disinterested party and who shall act as chairman of the board.

The Board of Arbitration thus formed shall proceed with all dispatch possible to settle the dispute.

It shall require the affirmative votes of at least three (3) of the five (5) members of the Board of Arbitration to decide the issues, and the decision of the Board of Arbitration in all cases shall be final and such decision shall be binding on the parties hereto. Any expenses incurred jointly through arbitration shall be shared equally by the Publishers and the Union.

Within thirty (30) days after signing this Agreement the Standing Committee shall agree upon a panel of three disinterested persons, to serve as arbitrators when called upon in accordance with provisions elsewhere set forth in this Section. Provided, that if the panel of three has not been completed within the time limit provided, then the selection shall be made by Judge Walter Perry Johnson, San Francisco, who shall select said men.

Section 37. This Agreement shall be in full force and effect for a period of two (2) years on and after the third day of June, 1940 and thereafter until a new contract has been agreed upon within the limitation hereinafter set forth.

If upon the anniversary date of this Agreement, either party wishes to propose a change in the guaranteed weekly minimums and/or hours, said party shall present written notice stating guaranteed weekly minimums and/or hours proposed sixty (60) days prior to June 3, 1941. The said notice, if served, to be accompanied by a detailed statement of changes desired. The party upon whom the original demand is made may present a counter proposal at any time within fifteen (15) days after such notice has been received and meetings to discuss the proposal or proposals shall begin within twenty (20) days after the original notice has been received. If no counter proposal be filed, the existing contract shall be considered to be the respondent party's counter proposal. If notice is served the guaranteed weekly minimums

that may be mutually agreed upon shall cover the full year immediately following the anniversary date of this Agreement. If notice is not given by one of the parties, as herein in this paragraph described, it shall be construed that the guaranteed weekly minimums and/or hours set forth in this Agreement shall be in effect during the life of this Agreement.

Either party desiring to amend the terms of this Agreement upon its expiration date shall give the other party sixty (60) days' notice to this effect in writing on any date after April 3, 1942. Such notice to be accompanied with a detailed statement of changes desired. The party upon whom the original demand is made may present a counter proposition at any time within thirty-five (35) days after such notice has been received. If no counterproposal be filed, the existing Agreement shall be considered to be the respondent party's counter proposal.

IN WITNESS WHEREOF, the said parties, by their representatives duly authorized to act, have hereunto set their hands and seals the day and year first above written.

San Francisco Newspaper Publishers' Association
By E. F. Bitler

Chronicle Publishing Company, Publisher of San Francisco Chronicle
By C. E. Gilroy

Hearst Publications, Inc., for the San Francisco Call-Bulletin Department thereof
By Presley Mallory

Daily News Company, Ltd., Publisher
of The San Francisco News
By John Vanbenthem

Hearst Publications, Inc., for the San
Francisco Examiner Department thereof
By J. B. Casaday

Newspaper and Periodical Vendors'
& Distributors' Union No. 468,
I.P.P. & A.U.
By Andrew J. McNamee
By Chas. H. Bowers
By A. J. Kallok
By Phil Fillbach
By G. J. Moriarity

The International Printing Pressmen and Assistants' Union of North America, by its President, duly authorized to act in its behalf, hereby underwrite the obligations assumed by the party of the second part under this agreement, and guarantees their fulfillment.

Geo. L. Berry,
President International Printing
Pressmen and Assistants' Union
of North America